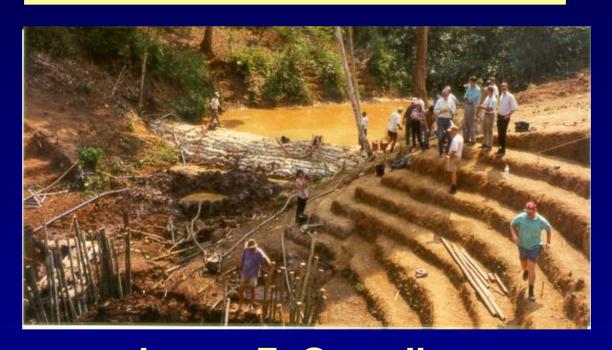


# Personnel Accounting: A Legal Framework





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## <u>Outline</u>



- Purpose
- The Law
- History
- Current Legislation And Cases
- Critical Definition
- Juxtaposition
- Bracketing
- Conclusion



#### The Law



- Missing Service Personnel Act of 1995, 10 U.S.C. §§1501 Et Seq., (MSPA) (Title 10, Chapter 76, Missing Persons)
- Missing Persons Act, 37 U.S.C. §§551 Et Seq., (MPA) (Title 37, Chapter 10, Payments to Missing Persons)



# History—Early Legislation And Cases



- "First" Missing Persons Act, March 2, 1799 (1 Stat. 709)—Navy
- Mar 30, 1814 (3 Stat. 113)—Army
- Missing Persons Act, Mar 7, 1942 (50 U.S.C. §§1001 Et Seq.)



# Current Legislation And Cases



- Current Missing Persons Act, Sep 6, 1966 (37 U.S.C. §§551 Et Seq.)
- "Title 37"
- Pay and Allowances
- McDonald V. Lucas, 371 F.Supp. 831 (S.D. N.Y. 1974)
- Townsend V. Carter, 476 F.Supp. 1070 (N.D. TX 1979)



# The Missing Service Personnel Act



• Feb 10, 1996 (10 U.S.C. §§1501 Et Seq.)

• "Title 10"

Status





#### Critical Definition



- Para E2.1.10, DoD Instruction 2310.5.
- "Hostile Action"
- "Acts of opposing force...resulting in the involuntary absence of covered persons while engaged in an operational environment, or while going to or returning therefrom."



### **Juxtaposition**



- Title 37—Non-Hostile Action; emphasis on pay and allowances
- Entitlement to pay and allowances ends— Evidence §552, PFOD §555, or Title 10
- §555—does not apply when Title 10 applies
- Title 10—Hostile Action; emphasis on status



## Bracketing



- Operation ALLIED FORCE
- Three US soldiers missing
- POWs held by Serbs
- Seen on television
- Serb Government admitted to holding
- Did Title 10 Apply?





#### **USS COLE**



- Bombing of USS COLE—Yemen
- Sailors unaccounted for
- Unaccounted for in ship
- Title 10 did not apply



- Rationale: Sailors not "missing"
- Other: Criminals? GCs don't apply?
   Hostile action? Operational environment?



### Attack On Pentagon



- Sep 11, 2001—Airplane crashed into Pentagon
- DoD personnel unaccounted for
- Title 10 did not apply
- Rationale: Not hostile action, not operational environment
- Missing?—USS COLE
- Criminals?—No GC protections





# Operation ENDURING FREEDOM



- Afghanistan
- Title 10 applies
- Hostile action
- Operational environment
- International armed conflict— GCs apply





## **Bracketing**

Title 37

Gray Area Title 10

Pentagon/USS COLE

Operations ALLIED FORCE/ENDURING FREEDOM

Spotting Line



### Conclusion



- Applicability Of Titles 37/10 being bracketed, but no cookie cutter answers
- Policy concerns will play a role
- Answers to hard questions will come from DoD General Counsel